



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2014-0833; FRL-9930-31-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;  
Preconstruction Requirements – Nonattainment New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted on August 22, 2013 by the Maryland Department of the Environment (MDE) on behalf of the State of Maryland. This revision pertains to Maryland's major nonattainment New Source Review (NSR) program, notably preconstruction permitting requirements for sources of fine particulate matter (PM<sub>2.5</sub>). This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-EPA-R03-OAR-2014-0833. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** David Talley, (215) 814-2117, or by e-mail at [talley.david@epa.gov](mailto:talley.david@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On March 25, 2015 (80 FR 15713), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of revisions to Maryland's major nonattainment NSR program, notably preconstruction permitting requirements for sources of fine particulate matter (PM<sub>2.5</sub>). The formal SIP revision (#13-06) was submitted by MDE on August 22, 2013.

Generally, the revisions incorporate provisions related to the 2008 "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR PM<sub>2.5</sub> Rule). 73 FR 28321 (May 16, 2008). As discussed in the NPR, the 2008 NSR PM<sub>2.5</sub> Rule (as well as the 2007 "Final Clean Air Fine Particle Implementation Rule" (2007 PM<sub>2.5</sub> Implementation Rule)<sup>1</sup>), was the subject of litigation before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Natural Resources Defense Council v. EPA*

---

<sup>1</sup> 72 FR 20586 (April 25, 2007).

(hereafter, *NRDC v. EPA*).<sup>2</sup> On January 4, 2013, the D.C. Circuit remanded to EPA both the 2007 PM<sub>2.5</sub> Implementation Rule and the 2008 NSR PM<sub>2.5</sub> Rule. The court found that in both rules EPA erred in implementing the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA (subpart 1), rather than pursuant to the additional implementation provisions specific to particulate matter in subpart 4 of part D of title I (subpart 4).<sup>3</sup> However, as was also discussed in the NPR, EPA's final actions redesignating all of the areas in Maryland which were nonattainment for the 1997 PM<sub>2.5</sub> NAAQS to attainment obviated the need for MDE to submit a nonattainment NSR SIP addressing PM<sub>2.5</sub> requirements, including those under subpart 4. *See* 80 FR 15714. EPA, therefore, did not evaluate MDE's August 22, 2013 SIP revision submittal for compliance with subpart 4. To the extent that any area in Maryland is designated as nonattainment for PM<sub>2.5</sub> in the future, MDE will have to make a submittal under CAA section 189 addressing how its nonattainment NSR permitting program satisfies all of the statutory requirements pertaining to PM<sub>2.5</sub>, including subpart 4.

## **II. Summary of SIP Revision**

The 2008 NSR PM<sub>2.5</sub> Rule: 1) required NSR permits to address directly emitted PM<sub>2.5</sub> and precursor pollutants; 2) established significant emission rates for direct PM<sub>2.5</sub> and precursor pollutants (including sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>)); 3) established PM<sub>2.5</sub>

---

<sup>2</sup> 706 F.3d 428 (D.C. Cir. 2013).

<sup>3</sup> The court's opinion did not specifically address the point that implementation under subpart 4 requirements would still require consideration of subpart 1 requirements, to the extent that subpart 4 did not override subpart 1. EPA assumes that the court presumed that EPA would address this issue of potential overlap between subpart 1 and subpart 4 requirements in subsequent actions.

emission offsets; and 4) required states to account for gases that condense to form particles (condensables) in PM<sub>2.5</sub> emission limits.

To implement these provisions, Maryland amended Regulation .01 under COMAR 26.11.01 (General Administrative Provisions) and Regulations .01 and .02 under COMAR 26.11.17 (Nonattainment Provisions for Major New Sources and Major Modifications). The general definitions at COMAR 26.11.01.01 were amended to add definitions of “PM<sub>2.5</sub>” and “PM<sub>2.5</sub> emissions.” COMAR 26.11.17 contains the preconstruction requirements for new major stationary sources and major modifications locating in nonattainment areas. The definitions of “regulated NSR pollutant” and “significant” under COMAR 26.11.17.01 were amended. The amended definitions require that sources account for the condensable fraction of PM<sub>10</sub> and PM<sub>2.5</sub>, require that NO<sub>x</sub> and SO<sub>2</sub> be regulated as precursors to PM<sub>10</sub> and PM<sub>2.5</sub>, and establish significant emission rates (SERs) for PM<sub>2.5</sub> and its precursors. COMAR 26.11.17.02 was revised to specify that all of the major nonattainment NSR preconstruction requirements of the chapter are applicable to new major stationary sources and major modifications that are major for PM<sub>2.5</sub> or its precursors. COMAR 26.11.17.02 was also revised to clarify that in addition to the requirements of that chapter, the Prevention of Significant Deterioration (PSD) requirements of COMAR 26.11.04.16 may also apply to sources locating in nonattainment areas.

Other specific requirements of MDE’s August 22, 2013 SIP revision submittal and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### **III. Final Action**

EPA is approving MDE's August 22, 2013 submittal as a revision to the Maryland SIP.

### **IV. Incorporation by Reference**

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MDE rules regarding definitions and permitting requirements discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

### **V. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal

governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's nonattainment NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2015.

William C. Early, Acting,  
Regional Administrator,  
Region III.



For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart V--Maryland**

2. In §52.1070, the table in paragraph (c) is amended by revising the entries for COMAR

26.11.01.01, 26.11.17.01, and 26.11.17.02 to read as follows:

#### **§52.1070 Identification of plan.**

\* \* \* \* \*

(c)\* \* \*

### **EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP**

| <b>Code of Maryland Administrative Regulations (COMAR) citation</b> | <b>Title/subject</b>  | <b>State effective date</b> | <b>EPA approval date</b>  | <b>Additional explanation/ citation at 40 CFR 52.1100</b> |
|---|---|-----------------------------|---|---|
| <b>26.11.01</b>   | <b>General Administrative Provisions</b>                    |                             |   |   |
| 26.11.01.01   | Definitions   | 7/8/13                      | [Insert date of Federal Register publication]<br>[Insert Federal Register citation] |   |
| * * * * *   |   |                             |   |   |
| <b>26.11.17</b>   | <b>Requirements for Major New Sources and Modifications</b> |                             |   |   |
| 26.11.17.01   | Definitions   | 7/8/13                      | [Insert   |   |

|             |               |        |   |   |
|-------------|---------------|--------|---|---|
|             |               |        | <u>date of</u><br><u>Federal</u><br><u>Register</u><br><u>publicatio</u><br><u>n]</u> <u>[Insert</u><br><u>Federal</u><br><u>Register</u><br><u>citation]</u>                   |   |
| 26.11.17.02 | Applicability | 7/8/13 | <u>[Insert</u><br><u>date of</u><br><u>Federal</u><br><u>Register</u><br><u>publicatio</u><br><u>n]</u> <u>[Insert</u><br><u>Federal</u><br><u>Register</u><br><u>citation]</u> |   |
| *           | *             | *      | *   | * |

\* \* \* \*

[FR Doc. 2015-16918 Filed: 7/10/2015 08:45 am; Publication Date: 7/13/2015]